

CRUMMY, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

ONE RIVERFRONT PLAZA

NEWARK, N.J. 07102-5497

201-596-4500

CABLE-TELEX

138154

TELECOPIER

201-596-0545

SUSANNE PETICOLAS

October 10, 1996

VIA FACSIMILE AND REGULAR MAIL

Carl R. Howard, Esq.
Assistant Regional Counsel
United States Environmental
Protection Agency - Region II
290 Broadway
New York, New York 10007-1866

**Re: Route 561 Dump Site, Gibbsboro
Camden County, New Jersey
Response to Request for Information**

Dear Mr. Howard:

This letter, on behalf of The Sherwin-Williams Company ("Sherwin-Williams"), is in response to the Request for Additional Information dated September 6, 1996 ("Supplemental Request") from the United States Environmental Protection Agency ("EPA") regarding the Route 561 Dump Site ("Site"). Sherwin-Williams received this Supplemental Request on September 10, 1996.

Sherwin-Williams previously responded to EPA's August 4, 1995 Information Request ("Initial Request") regarding the same Site by Response dated October 19, 1995. Sherwin-

258064



Carl R. Howard, Esq.
October 10, 1996
Page 2

Williams conducted a diligent search in response to this request and made numerous company files available to EPA for review at the offices of Crummy, Del Deo, Dolan, Griffinger & Vecchione. The information made available to EPA included deposition transcripts of current and former employees regarding the operations at the plant. These employees were: Gordon S. Kuntz, Robert Tschannen, Robert DuLaney (Vol. 1 and 2), William Taylor, Robert Burke, Jack Whiteside, Albert Gosa, Jerry Fiamingo, Robert Henderson and Al Dutill. The Company also produced documents in response to the Initial Request, including the Site investigation done by DEP, maps produced by Scarborough in the Scarborough Litigation, Raw Materials Consumption Reports, production documentation from 1973 - 1976, documentation relative to the 1950s and disposal practices, and reports filed by Roy F. Weston, Inc. relative to the Burn Site. Sherwin-Williams inadvertently omitted a Certification to the 1995 response, and will provide a certification to the response.

With respect to the information contained in the October 19, 1995 Response, including the documents made available to EPA for review, Sherwin-Williams made a detailed Response to the Initial Request based on the information that it had available to it. The Supplemental Request for Information dated September 6, 1996 requests additional information which was not requested in the August 4, 1995 Initial Request. Moreover, it requests information regarding the plant operations from a timeframe dating long after John Lucas & Co. sold Block 18.07, Lot 9 in 1946. Sherwin-Williams has been working diligently to prepare this response. Sherwin-

Carl R. Howard, Esq.
October 10, 1996
Page 3

Williams has requested additional time to respond to the Supplemental Request and plans to supplement this response by October 28, 1996. Sherwin-Williams herein provides its responses numbered as requested by the September 6, 1996 Supplemental Request.

Responses to Supplemental Request for Information

1. EPA commented that "several Weston Reports state '... in 1930 John Lucas and Co. merged with Sherwin-Williams of Cleveland, Ohio'. This is in contradiction with information provided to EPA by Sherwin-Williams in your October 19, 1995 response to the August 6, 1995 Route 561 Dump Site Request for Information."

The Initial Request for information did not ask any specific questions about the legal relationship or merger between the former John Lucas Company and The Sherwin-Williams Company. Accordingly, Sherwin-Williams did not provide any information on the merger. Sherwin-Williams Consultant Roy F. Weston produced numerous reports in connection with investigative and remedial activities at the former Gibbsboro Plant. The purpose of these reports was to outline proposed sampling and report the results. They do not constitute a legal position on corporate transactions. Sherwin-Williams does not know what is referred to by "other historical information available to EPA and the NJDEP" or discussions with unnamed "former employees and residents in the neighborhood surrounding the former Plant." It is unlikely that either former employees or residents in the neighborhood would have accurate information regarding a corporate legal transaction such as a merger.

Carl R. Howard, Esq.
October 10, 1996
Page 4

In response to the Supplemental Request for specific information regarding the relationship between the John Lucas Company and Sherwin-Williams, Sherwin-Williams provides the following information. It is believed that the plant business was originally conducted under the name of John Lucas and Company (unincorporated). In or about April 16, 1909, the assets of the unincorporated company were sold to John Lucas & Co., Inc., a corporation organized under the laws of the State of Pennsylvania.

Pursuant to an agreement dated December 24, 1929 between The Sherwin-Williams Company, an Ohio Corporation and John Lucas & Co., Inc., a Pennsylvania corporation, it appears that The Sherwin-Williams Company created a new corporation incorporated under the laws of Delaware known as John Lucas & Co., Inc. It appears that from 1930 to 1935, John Lucas & Co., Inc., the Delaware corporation, was operated as a subsidiary of The Sherwin-Williams Company.

On or about August 14, 1935, a corporation known as John Lucas & Co., Inc., a Maryland Corporation was formed. In accordance with a Certificate of Good Standing for The Sherwin-Williams Company from the State of Ohio, a Certificate of Agreement of Merger of John Lucas & Co., Inc., a Maryland corporation, into The Sherwin-Williams Company, an Ohio corporation, was filed on August 28, 1967.

Carl R. Howard, Esq.
October 10, 1996
Page 5

2. EPA questions Sherwin-Williams October 19, 1995 response because it stated that "it was not able to identify detailed information on manufacturing processes at the Gibbsboro Plant through the 1940's."

Sherwin-Williams has interviewed numerous former employees and also made available to EPA depositions of its former employees that were taken in connection with the Buzby Brothers litigation. None of these former employees were employed prior to 1950. Sherwin-Williams is not aware of any employees or former employees with detailed knowledge of operations at the Gibbsboro Plant in the 1940s. EPA refers to discussions with former employees and residents in the neighborhoods surrounding the former Plant who purportedly provided such information. Sherwin-Williams would appreciate receiving from EPA the information EPA obtained about Plant operations from the 1930s to 1977.

EPA cites references to Gibbsboro operations in the 1930s included in one or more Weston reports. It is believed that information in the Weston reports was derived from a history dated August 1982, which was not prepared by Sherwin-Williams, but was privately prepared for Robert K. Scarborough, owner and developer of the Paint Works Corporate Center, Gibbsboro, New Jersey.

EPA states that it "considers the responses to the questions in the Dump Site Request for Information with regard to John Lucas & Co., and/or Sherwin-Williams' past manufacturing and formulating operations, raw materials, products and pigment formulations to be insufficient and

Carl R. Howard, Esq.
October 10, 1996
Page 6

believes that Sherwin-Williams has not been forthright in its responses." Sherwin-Williams conducted a detailed review in response to the Initial Request and provided narrative summaries describing the former plant operations. It should be noted that EPA's request pertains to manufacturing operations at the Gibbsboro facility, which is not the site at issue. Nonetheless, Sherwin-Williams has provided information it has been able to locate and will supplement this response if additional information is located.

EPA states "In Sherwin-Williams October 19, 1995 response, Allen Danzig referred EPA to documents at the Crummy, Del Deo, Dolan, Griffinger & Vecchione offices concerning the products manufactured at the Gibbsboro Plant from 1920 to when the company ceased operations." A review of Sherwin-Williams October 19, 1995 response does not reveal any representation that Sherwin-Williams had documents concerning products manufactured back to the 1920s. Sherwin-Williams provided what production information it had to EPA during the inspection on April 17, 1996. Unfortunately, Sherwin-Williams has only located production reports dating back to 1973 well beyond the timeframe during which John Lucas owned Block 18.07, Lot 9. Sherwin-Williams is seeking information on the product codes for these reports and other responsive information, although the information is likely to be largely irrelevant. Sherwin-Williams has not identified any information suggesting that it disposed of product at the Dump Site. Moreover, John Lucas & Co.'s ownership of that part of the Dump Site known as

Carl R. Howard, Esq.
October 10, 1996
Page 7

Block 18.07, Lot 9, terminated in 1946, as shown by the title search provided in response to the Initial Request.

3. EPA comments that Sherwin-Williams was asked to provide detailed information on how hazardous substances were stored at the facility. EPA did not make such a request in the Initial Request dated August 4, 1995. While Sherwin-Williams is not clear which facility is referred to, it has not located information that hazardous substances were stored at the Dump Site.

The current information request asks that Sherwin-Williams describe in detail how and where chemicals at the plant were used. The depositions of former employees which were provided to EPA for review included information on materials used during the manufacture of products at the Plant. Specifically, Jerry Fiamingo, former Paint Superintendent, describes the process for manufacturing varnish. Messrs. Robert DuLaney, former Plant Engineer, Robert Lambert, James Gadwood, former Mechanical Maintenance Foreman, and Albert Gosa, former Purchasing Manager describe generally the various manufacturing processes. In addition, a narrative description was provided in our response dated October 19, 1995.

Information on storage of various raw materials was contained in various depositions and also in a 1974 map that details the various raw materials storage tanks for liquid raw materials. Pigments, according to various depositions came in bags. See Fiamingo Deposition dated October 18, 1985, at p. 86.

Carl R. Howard, Esq.
October 10, 1996
Page 8

Testimony regarding the company's policy and operating procedures for work off of scrap and off specification paints, lacquers and varnishes are included inter alia in the following depositions: Robert DuLaney, Albert Gosa, Robert Lambert and Jerry Fiamingo. These depositions also discuss barn paint, which was a cheap paint made up of off specification paints and paints that could not be re-worked. According to Mr. Fiamingo, this operation was conducted in the main Paint Building.

4. EPA states that Sherwin-Williams did not adequately respond to question 3 concerning the locations of specific operations and processes at the Gibbsboro Plant. Sherwin-Williams' information comes primarily from the testimony of ex-employees. EPA specifically asks about Building 57 and Building 62. According to the depositions of Albert Gosa and William Taylor, Building 57 was used for the storage of raw materials. Clearly, this would be dry raw materials such as pigments, since liquid raw materials were stored in tank cars and tanks, and 55 gallon drums for certain solvents for ease of use. Building 62 was for the storage of finished goods including latex paint, pails and brushes (Gosa Dep. at 51-52). See also deposition of Robert Lambert.

Mr. Taylor, who worked in the Receiving Department, testified that formaldehyde was kept in storage tanks, acetone was kept in tanks or drums, linseed oil, latex and thinners were stored in tank wagons. According to Mr. Gosa and Mr. Lambert, Building 58 was a warehouse

Carl R. Howard, Esq.

October 10, 1996

Page 9

for finished products. None of the deponents were able to identify what, if anything, was stored in the 2,000 drums, triple-stacked that are referenced on the 1974 map.

With respect to the solvents that were used to supplement the fuel in the boiler in Building 37, both Mr. DuLaney and Mr. Gosa testified that solvent waste from the Paint Plant which could not be re-worked into the paint was burned in the boiler.

5. Regarding EPA's request on disposal of wastestreams, Sherwin-Williams has identified documents provided to EPA and testimony of ex-employees that indicates plant trash of all types was routinely burned in the area of the Burn Site. Tank washouts from the latex system were disposed of in the sanitary waste system on Plant property.

EPA requested that Sherwin-Williams respond to certain specific paragraphs:

EPA has reason to believe that during the period in the 1950s and 1960s, but not limited to these years, sludge and/or residues were pumped from the boiler room in Building 37 into drums that went to Buzby's Landfill. Two settling tanks behind Building 37 reportedly generated sludges and/or residues.

Information from ex-employees Mr. DuLaney and Mr. Gosa indicate that the materials in the settling tanks were burned in the boiler system. Sherwin-Williams has no information that any residues from the settling tanks were placed into drums and sent to Buzby's Landfill during the 1950s and 1960s.

EPA states:

Building 37 is also reported to have contained a still which generated still bottoms. Provide an estimate of the quantity

Carl R. Howard, Esq.
October 10, 1996
Page 10

generated for each of these materials. Specifically state the location where these materials were disposed of.

Sherwin-Williams has not been able to confirm the existence of a still or any quantities of materials generated outside Building 37. The testimony of Gosa and DuLaney suggest that the solvent wastes outside Building 37 were used to fuel the boiler.

EPA states:

The paint strainer machine in Building 39 generated solids that were reportedly placed into cardboard boxes and disposed of. Provide an estimate of the quantity generated for this materials. Specifically state the location where the materials was disposed of.

Sherwin-Williams responds that Jerry Fiamingo, who was the Paint Superintendent from 1966 until 1978, states that the dried paint that resulted from straining latex paint was put in a cardboard box and generated less than one-half gallon per batch. He believed that this latex dried paint was disposed of with regular plant trash. Fiamingo Deposition at p. 99.

EPA states:

In the Lacquer and Paint Department what was the final disposition of waste thinners, solvents and scrap lacquers that could not be re-used or re-worked? Provide an estimate of the materials generated for each of these materials. Specifically state the location where these materials were disposed of.

Messrs. Gosa, DuLaney and Fiamingo testified that waste thinners, solvents and scrap lacquers that could not be re-used or re-worked were burned in the boiler behind Building 37.

EPA states:

Carl R. Howard, Esq.
October 10, 1996
Page 11

In the Sher-dye process provide an estimate of the quantity of material generated by the tank washes. Specifically state the location where this material was disposed of.

Sherwin-Williams responds that, according to testimony of ex-employees, the tank washes from Sher-dye were disposed of in the on-site sanitary system. Sherwin-Williams cannot provide an estimate of this material. In addition, the accumulated material from the on-site sanitary system was removed to an approved off-site location pursuant to an Administrative Consent Order entered into in 1978 with NJDEP.

In addition, please be advised that Sherwin-Williams has not found any documents relating to disposal practices prior to the 1950's.

6. EPA requested a discussion on the former tank farm on United States Avenue, including when it was first used, how long it was used and the materials and quantities that were stored in the tanks during their existence for both John Lucas Company and Sherwin-Williams operations.

The 1974 map indicates the location of the former tank farm and what materials were contained in each tank. Sherwin-Williams has not located information regarding what may have been contained in those tanks at earlier times.

7. DEP claims as a deficiency that Sherwin-Williams failed to provide requested photos and diagrams in response to the previous Route 561 Dump Site Request and refers to purported maps depicting Site conditions in the 1940's which were included in a June, 1991

Carl R. Howard, Esq.
October 10, 1996
Page 12

Weston Work Plan. Two property plot maps included in the June, 1991 Weston Work Plan are entitled "Property Plat for Lucas Paints." One is dated 1945 and the other is dated 1946. Neither of these maps depict Site conditions for the Route 561 Dump Site. This Site does not show up on either of these maps. However, Sherwin-Williams will make these maps available for inspection and copying to EPA. Sherwin-Williams has not found any photos or diagrams of the Route 561 Dump Site.

8-16. With respect to Requests 8 through 16, Sherwin-Williams is still searching for responsive information and documents.

17. EPA claims Sherwin-Williams failed to provide the telephone numbers for the persons, specifically, DuLaney, Williams, Gosa, Burke, Taylor, Whiteside, Dutill, Gadwood and Lambert listed in its response to EPA's previous 104e letter. In the directions provided in the 104e letter, telephone numbers were not requested of these individuals. Only instruction #7, that relates to "an individual other than one employed by your company," requests the phone number. However, in response to this request, Sherwin-Williams provides the following information.

Robert DuLaney - (609)845-8126, Al Gosa - (216)543-5834, Robert Burke - (414)767-0447, William Taylor - (609)783-6790, Al Whiteside - (609)784-1022, Alfred Dutill - (609)784-2536, James Gadwood - (708)438-0528, Robert Lambert - (609)629-5668.

EPA also requests the years of employment of the above-listed persons. Each of these individuals was deposed in connection with the Buzby matter. Those depositions were provided

Carl R. Howard, Esq.
October 10, 1996
Page 13

to EPA and in each of those depositions, the individual testified as to his years of employment. Thus, the information was provided to EPA. However, Sherwin-Williams has reviewed those depositions and based on the deposition testimony, provides the following information relating to their employment and positions:

Albert Gosa -	1963-1982 Head of Purchasing Dept. 1963-1976-Gibbsboro Assistant-Cleveland-Witness unable to estimate when he held position. Head of the purchasing department for all factories-Cleveland-1976-1982
Robert Lambert -	1966-1978-Gibbsboro Mechanical Maintenance Foreman.
Jack D. Whiteside -	1960-1968/69 Guard Duty with some Janitor Work.-Gibbsboro 1969-1978 Dump Truck, Outside Maintenance Mechanic-Gibbsboro
Alfred Dutill -	1951 - 1978 Gibbsboro Varnish Department-Four years at the most Night Janitor-Less than five years Night Watchman-Witness unable to estimate when he held position Outside Maintenance-Witness unable to estimate when he held position Security 1970-1978(Closing)
Robert Burke -	1958-1978 Bench Chemist-Chicago Manufacturing - Resins Department-Chicago Resin and Lacquer Superintendent-Chicago Production Manager of the Plant-Chicago Plant Manager - Gibbsboro (2 Years) 1973-1975 Manufacturing Manager - Cleveland
William Taylor-	1953-1978 Receiving Department-Gibbsboro Outside Maintenance-Gibbsboro (For a few months before Plant closing) Janitor-Gibbsboro (For a few months before Plant closing)

Carl R. Howard, Esq.
October 10, 1996
Page 14

James Gadwood - 1966- 1978
Process Supervisor-Chicago
Varnish Supervisor-Chicago
Plant Manager - Gibbsboro 1975-1978

Robert J. DuLaney - 1964/65-1976
Plant Engineer-Gibbsboro

As discussed above, Sherwin-Williams plans to file further responses to the Supplemental Request by October 28, 1996. Sherwin-Williams needs this time, given the extensive amount of information requested and the difficulty of responding to questions requesting information which goes back many years. In the meantime, to assist Sherwin-Williams in its supplemental response, Sherwin-Williams requests EPA to provide Sherwin-Williams with information or records used as a basis for the information requests, including (1) information regarding any interviews with former employees and others, (2) any information used to claim Sherwin-Williams' connection to the Site and (3) information used in making requests numbered 5 to 16. Such information may help Sherwin-Williams in preparing a supplemental response to this request.

Very truly yours,


Susanne Peticolas

SP:rd